

year differs from the consolidated taxable income or tax because of inter-company transactions excluded from the consolidated return. It shall provide for appropriate and equitable adjustment of the allocation specified under paragraph (c)(2)(ii) to the extent that the consolidated tax and separate return tax for any year include material items taxed at different rates or involving other special benefits or limitations. Such adjustments will be directed to allocating to the individual members of the group the material effects of any particular features of the tax law applicable to them.

(4) The tax agreement may exclude from the allocation under paragraph (c)(2)(i) of this section associate companies not having a positive corporate taxable income for the year being allocated, or under paragraph (c)(2)(ii) of this section associate companies not having a positive separate return tax for the year being allocated. An agreement under this paragraph shall make appropriate and equitable provision for preserving to each subsidiary company so excluded the equivalent of any rights which such company would have had, under the applicable tax law, had it filed a separate return, to use in other years any loss or credit availed of by the group through the consolidated return. With respect to carryover rights, such provisions will normally consist of recognition of the carryover in future allocations by reducing the consolidated tax allocation in the subsequent year of the subsidiary company entitled to the benefit, and by charging the excess to the companies which had benefited by the prior deduction or credit. In the case of a carryback, the excluded subsidiary company should normally be paid the amount of refund to which it would have been entitled had it filed a separate return.

(5) The agreement may, instead of excluding members as provided in paragraph (c)(4), include all members of the group in the tax allocation, recognizing negative corporate taxable income or a negative corporate tax, according to the allocation method chosen. An agreement under this paragraph shall provide that those associate companies with a positive allocation will pay the

amount allocated and those subsidiary companies with a negative allocation will receive current payment of their corporate tax credits. The agreement shall provide a method for apportioning such payments, and for carrying over uncompensated benefits, if the consolidated loss is too large to be used in full. Such method may assign priorities to specified kinds of benefits.

(6) The tax agreement for each taxable year shall be filed as an exhibit to the system's annual report on Form U5S (§259.5s of this chapter) for the previous taxable year. The initial filing after the effective date of this amendment shall be made as an amendment to the last Form U5S filed. If an existing tax agreement is merely renewed or amended, prior filings may be incorporated by reference. Amendments to a tax agreement shall be filed as an amendment to the Form U5S. Any amendment which would alter the allocation to any associate company for any period preceding its adoption shall be conditioned on approval by the Commission if the Commission directs, within 60 days after its filing, that it be deemed to be a declaration under Rule 45(a).

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 20 FR 488, Jan. 21, 1955; 46 FR 18534, Mar. 25, 1981; 52 FR 48986, Dec. 29, 1987; 62 FR 7915, Feb. 20, 1997; 63 FR 9741, Feb. 26, 1998]

#### **§ 250.46 Dividend declarations and payments on certain indebtedness.**

(a) *Dividends.* No registered holding company or subsidiary thereof shall declare or pay any dividend on any security of such company out of capital or unearned surplus, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in §250.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the act.

(b) *Payments on certain indebtedness.* No registered holding company or subsidiary company thereof shall, directly or indirectly, make any payment of principal or interest on any note, bond, book account or any indebtedness however evidenced which is or was issued

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as, or based upon a dividend or dividends created or issued or declared from, or charged against, capital or unearned surplus, or in renewal of, or in exchange for any such obligation, whether such dividend was declared before or after the act took effect, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the Act. In determining whether proposed payments on any such indebtedness issued or declared as a dividend in part out of earned surplus and in part out of capital or unearned surplus, or issued in renewal of, or in exchange for, such indebtedness, fall within this paragraph, past payments on account of such indebtedness or any predecessor indebtedness shall be deemed to have been first applied in reduction of the portion of such indebtedness issued or declared as a dividend out of earned surplus.

### **§ 250.47 Exemption of public utility subsidiaries as to certain securities issued to the Rural Electrification Administration.**

(a) *Exemption.* Any public utility company which is a subsidiary company of a registered holding company shall be exempt from the obligations, duties, or liabilities imposed by the act or any rule thereunder, on such company as a subsidiary company, with respect to the issue and sale to the Rural Electrification Administration, of any security of which it is the issuer in an amount not exceeding in any one calendar year 2 percent of the aggregate of the outstanding funded indebtedness plus the capital and surplus accounts of the issuer as of the end of the prior calendar year. Such company shall also be exempt with respect to the pledge of any security or other property as collateral for any security so issued or sold, and with respect to the redemption or retirement, in whole or in part, of any such security.

(b) *Certificate of notification.* Within 10 days after the issue or sale of any security exempt under this section, the issuer shall file with the Commission a

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certificate of notification on Form U-6B-2 containing the information prescribed by that form.

### **§ 250.48 Certain exemptions in connection with appliance sales and loans to officers or employees.**

(a)(1) *Exemptions in connection with appliance sales.* Any public utility company, or subsidiary thereof, or associate service company thereof, shall be exempt from section 9(a) of the Act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition, in the ordinary course of business, of any evidence of indebtedness executed by customers of such public utility company as consideration for the purchase (whether from such public utility company, from an associate company thereof, or from dealers) of standard electric or gas appliances, or reacquisition of any such security guaranteed by such company.

(2) *Guarantee.* Any public utility company, or subsidiary thereof, or associate service company thereof, shall be exempt from the provisions of section 6(a) of the Act (49 Stat. 814; 15 U.S.C. 79f) and of § 250.44 with respect to the guarantee, by endorsement or otherwise, and sale of any such customers' evidence of indebtedness. This paragraph shall be inapplicable to any company which is a registered holding company.<sup>4</sup>

(3) *Issuance of note.* Any public utility company, or subsidiary thereof, or associated service company thereof, shall be exempt from the provisions of section 6(a) of the Act with respect to the issue or sale of any note or draft which is, and at all times will be, secured by a pledge of such customers' evidence of indebtedness having a principal amount still unpaid at least equal to the unpaid principal amount of such note or draft. This paragraph shall be inapplicable to any company which is a registered holding company.<sup>4</sup>

(4) *Acquisition of guaranteed paper or retirement of notes.* Any public utility company, or subsidiary thereof, or associate service company thereof, shall

<sup>4</sup> Any registered holding company which is also a public utility company and whose regular course of business involves activities within the scope of this section may file a declaration, regarding such activities. See § 250.22(a).